

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA

Title III

No. 17 BK 3283-LTS

(Jointly Administered)

Re: ECF No. 3092

AMERICAN FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES, AFL-CIO
(AFSCME),

Movant,

against

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

and

BETTINA WHYTE,

as agent of

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); and (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747). (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO,

as representative of

THE PUERTO RICO SALES TAX FINANCING
CORPORATION,

Respondents.

**RESPONSE OF FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO TO MOTION OF AMERICAN FEDERATION
OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO (AFSCME) TO
COMPEL COMPLIANCE WITH THE AUGUST 10, 2017 STIPULATION AND ORDER**

To the Honorable United States District Court Judge Laura Taylor Swain:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”),² as the representative of Title III debtors the Commonwealth of Puerto Rico (the “Commonwealth”), the Puerto Rico Sales Tax Financing Corporation (“COFINA”), the Puerto Rico Highways and Transportation Authority (“HTA”), the Puerto Rico Electric Power Authority (“PREPA”), and the Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS,” and together with the Commonwealth, COFINA, HTA, and PREPA, the “Debtors”) pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), respectfully submits this response (the “Response”) to the *Motion by the American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME) to Compel Compliance with the August 10, 2017 Stipulation and Order* [Docket No. 3092] (the “Motion”). In support of the Response, the Oversight Board respectfully represents as follows:

² Capitalized terms not otherwise defined shall have the meaning as ascribed to them in the Motion.

Response

1. First, to the extent the Motion insinuates the Oversight Board violated the Stipulation,³ it is completely wrong. Section 4(n) of the Stipulation expressly provides that notwithstanding anything else in the Stipulation, the Oversight Board can negotiate and propose plans of adjustment that settle the Commonwealth-COFINA dispute. Accordingly, the Oversight Board is fully authorized by PROMESA and the Stipulation to negotiate with any creditors, inside or outside the mediation, and to propose a plan of adjustment resulting from those negotiations, which plan may include a settlement of the Commonwealth-COFINA dispute.

2. The Oversight Board understands the mediators' efforts to mediate a resolution of the Commonwealth-COFINA dispute led to a proposal agreed to by respective groups of GO creditors and COFINA senior bondholders. That proposal, which the parties publicized, attempted to resolve the Commonwealth-COFINA dispute and to settle the bulk of the GO claims in the context of a COFINA plan of adjustment that would cause COFINA to purchase GO claims. While the Oversight Board announced the proposal was unaffordable and raised other issues, it also announced it "welcomes the opportunity to engage with all of Puerto Rico's creditors towards a consensual and comprehensive debt restructuring that has economic terms that are affordable, sustainable, and consistent with the certified New Fiscal Plan over both the short and long-term."⁴ A successful negotiation of the proposal could aid the Commonwealth by restructuring a very significant portion of its overall debt and expedite distributions to creditors.

³ See Motion ¶ 14 ("Neither the Oversight Board nor the COFINA Agent . . . denied or stated any objection to having been approached by the Supporting Parties—through the Mediation Team—to negotiate directly a resolution to the Commonwealth-COFINA dispute.").

⁴ Press Release, Financial Oversight and Management Board for Puerto Rico, Oversight Board States Terms of GO-COFINA Creditor Proposal Are Unaffordable, Do Not Align with Certified Fiscal Plan (May 14, 2018), <https://juntasupervision.pr.gov/wp-content/uploads/wpfd/49/5af97d677debe.pdf>.

In the meantime, the Oversight Board's agents continue to negotiate and mediate the Commonwealth-COFINA dispute and may resolve that issue in a constructive manner.

3. Second, while the Oversight Board agrees the GO Creditor Representative is not authorized by the Stipulation to negotiate any proposed settlement of the Commonwealth-COFINA dispute entitled to the treatment set forth in the Stipulation, *see* Stipulation ¶ 4(i), nothing bars the GO Creditor Representative or other creditors from negotiating, with or without mediation, the treatment of its constituency under a plan of adjustment with any party. The consequence of the GO Creditor Representative negotiating a proposal that, among other things, resolved the Commonwealth-COFINA dispute is simply that the proposal cannot be implemented without consent of the Oversight Board's agents, or itself. Indeed, that is presumably why the GO Creditor Representative asked for the Oversight Board's agreement to implement it through a Title III plan of adjustment.

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WHEREFORE the Oversight Board respectfully requests the Court (i) deny the Motion, and (ii) grant the Oversight Board such other relief as is just.

Dated: May 19, 2018
San Juan, Puerto Rico

Respectfully submitted,

/s/ Martin J. Bienenstock

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